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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAMUEL L. GENSAW III, et al.,

CASE NO.: C-07-3009-TEH

11 Plaintiffs,

ANSWER TO COMPLAINT
[Jury Trial Requested]

12 vs.

13 DEL NORTE COUNTY UNIFIED
14 SCHOOL DISTRICT, et al.,

15 Defendants.

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17 Defendant Del Norte County Unified School District, a political subdivision of the
18 State of California; Robert Berkowitz, sued in his professional capacity as a member of
19 the Del Norte County Unified School District Board; Thomas Cochran, sued in his
20 official capacity as a member of the Del Norte County Unified School District Board;
21 Faith Crist, in her official capacity as a member of the Del Norte County Unified School
22 District Board; William Maffett, in his official capacity as a member of the Del Norte
23 County Unified School District Board; Jan Moorehouse, in her official capacity as a
24 member of the Del Norte County Unified School District Board; William Parker, in his
25 official capacity as a member of the Del Norte County Unified School District Board,
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1 answer plaintiff's complaint filed herein, as modified by the Court's Order partially
2 granting and partially denying defendants' Motion to Dismiss as follows:

3 **GENERAL ALLEGATIONS**

4 Responding to ¶ 1 of the Complaint, defendants admit that plaintiffs are seeking
5 declaratory and injunctive relief arising out of plaintiffs' challenge to the June 9, 2005
6 decision by the Del Norte County Unified School District to close the middle school
7 grades of Margaret Keating Elementary School and deny that plaintiffs constitute a
8 certifiable class.

9 Responding to ¶ 2 of the Complaint, defendants admit that at the time the
10 complaint was filed approximately 67% of the students at Margaret Keating were Native
11 Americans and admit a Yurok structure is maintained at the Margaret Keating School, but
12 deny that it constitutes "a model Yurok village." Defendants deny the allegations of the
13 third and fourth sentences of ¶ 2, as pled. Defendants admit on information and belief the
14 allegations of the fifth and sixth sentences, and affirmatively allege such facilities and
15 opportunities remain available. Defendants lack sufficient information or belief upon
16 which to admit or deny the remaining allegations in the paragraph, and based on such
17 lack of information or belief, defendants deny each and every other allegation contained
18 therein.

19 Responding to ¶ 3 of the Complaint, defendants deny the allegations in the first
20 sentence. As to the second sentence, defendants admit on information and belief that
21 Native Americans comprise approximately 15% of the students in the overall district and
22 deny on information and belief the remaining allegations contained in said paragraph.

23 Responding to ¶ 4 of the Complaint, defendants admit that the Board of the Del
24 Norte County Unified School District approved the closure of the middle school grades at
25 Margaret Keating School and to reassign the students in those grades to Crescent Elk
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1 Middle School. Further responding to said paragraph, defendants deny the remaining
2 allegations contained therein.

3 Responding to ¶ 5 of the Complaint, defendants admit that budget considerations
4 factored in part into the closing of the middle school grades at Margaret Keating and
5 affirmatively allege that educational opportunities at other schools also factored into the
6 decision. Defendants admit that the alleged, but not actual, justification is contrary to
7 recommendations made by a "Blue Ribbon Facilities Committee." Further responding to
8 said paragraph, defendants deny the remaining allegations contained therein.

9 Responding to ¶ 6 of the Complaint, defendants admit that a letter from the United
10 States Department of Education Office of Civil Rights ("OCR") states that the OCR
11 conducted an investigation of the District's decision to close the middle school grades at
12 Margaret Keating in response to a complaint, that the letter stated that the OCR found
13 that the District did not comply with Title VI and "the regulation," based on the negative
14 determination that "there was not sufficient evidence to establish that the decision was
15 made for reasons other than national origin," deny that it made an affirmative and express
16 determination that the Board acted with discriminatory intent against Margaret Keating
17 Native American students on the basis of race in violation of Title VI or any applicable
18 regulation, and deny the remaining allegations in this paragraph. In addition, defendants
19 affirmatively allege that the OCR letter is does not create the source of the rights sued
20 upon by the plaintiff, is not relevant precedent in this proceeding, and that the standards
21 applicable to OCR regulatory determinations are not the same standards which apply to a
22 private cause of action. Further responding to said paragraph, defendants deny the
23 remaining allegations contained therein.

24 Responding to ¶ 7 of the Complaint, defendants deny each and every allegation set
25 forth therein.

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1 Responding to ¶ 8 of the Complaint, defendants deny each and every allegation set
2 forth therein.

3 Responding to ¶ 9 of the Complaint, defendants deny each and every allegation set
4 forth therein.

5 Responding to ¶ 10 of the Complaint, defendants admit that plaintiffs seek the
6 relief described therein, and deny that plaintiffs are entitled to the relief sought. Further
7 responding to said paragraph, defendants deny the remaining allegations contained
8 therein.

9 JURISDICTION

10 Responding to ¶ 11 of the Complaint, defendants admit that plaintiffs allege
11 jurisdiction under 42 U.S.C. §1983, the 14th Amendment to the United States
12 Constitution, Title VI of the Civil Rights Act 1964, 42 U.S.C. §2000d et seq., and
13 California Government Code §11135, et seq., and deny that plaintiffs are entitled to relief
14 under said provisions.

15 Responding to ¶ 12 of the Complaint, defendants admit that the cited provisions
16 generally confer subject matter jurisdiction, and that Rule 23(b)(2) of the Federal Rules
17 of Civil Procedure authorizes class actions, and deny that plaintiffs are entitled to relief
18 under any of these specified provisions, and deny that plaintiffs are a certifiable class.

19 VENUE

20 Responding to ¶ 13 of the Complaint, defendants admit that venue is proper.

21 INTRADISTRICT TRANSFER

22 Responding to ¶ 14 of the Complaint, defendants admit that this case is assignable
23 to the San Francisco division or the Oakland division pursuant to Civil L.R.C. 3-2(d).

24 PLAINTIFFS

25 Responding to ¶ 15 through ¶ 24 of the Complaint, inclusive, defendants lack
26 sufficient information or belief upon which to admit or deny the allegations set forth in

1 these paragraphs, and based on such lack of information or belief, defendants deny each
2 and every allegation contained therein.

3 Responding to ¶ 25 through ¶ 33 of the Complaint, inclusive, defendants admit the
4 allegations set forth therein.

5 **CLASS ACTION ALLEGATIONS**

6 Responding to ¶ 34 and ¶ 35 of the Complaint, inclusive, defendants admit that
7 plaintiffs seek class certification under Federal Rule of Civil Procedure 23(a)(b)(2), and
8 deny that plaintiff's qualify for class certification.

9 **ALLEGATIONS PERTAINING TO DEFENDANTS**

10 Responding to ¶ 36 of the Complaint, the District admits that it receives federal
11 funding as alleged. Further responding to said paragraph, defendants deny on
12 information and belief the remaining allegations contained therein.

13 Responding to ¶ 37 of the Complaint, defendants deny each and every allegation
14 set forth therein.

15 Responding to ¶ 38 of the Complaint, defendants deny each and every allegation
16 set forth therein.

17 Responding to ¶ 39 of the Complaint, defendants admit Margaret Keating was, at
18 the time the complaint was filed the only school that taught sixth, seventh and eight
19 grades in the Klamath community. Further responding to said paragraph, defendants
20 deny on information and belief the remaining allegations contained therein.

21 Responding to ¶ 40 of the Complaint, defendants admit the allegations set forth
22 therein.

23 Responding to ¶ 41 of the Complaint, defendants lack sufficient information or
24 belief upon which to admit or deny the allegations set forth in this paragraph, and based
25 on such lack of information or belief, defendants deny each and every allegation
26 contained therein.

1 Responding to ¶ 42 of the Complaint, defendants admit the allegations set forth
2 therein.

3 Responding to ¶ 43 of the Complaint, defendants admit that the Blue Ribbon
4 Facilities Committee, in the Blue Ribbon Report, stated that “[t]he largest savings would
5 be realized from closing an in-town school, assuming that there will be a minimum
6 change in the school-age population with the opening of the casino resort,” admit that the
7 Committee’s report stated that one of its recommendations was to “consider changing
8 Mountain to a K-5 school,” and noted that the District was currently busing children into
9 town and would be able to transport students in grades six through eight without any
10 additional expense, admit that the Committee also recommended busing students in
11 grades six through eight from Margaret Keating into Crescent City, deny that the
12 Committee noted that the that busing Margaret Keating to Crescent Elk would require
13 additional expense, and deny that it identified the closing of grades six through eight of
14 Margaret Keating as the least effective cost-saving measure.

15 Responding to ¶ 44 of the Complaint, defendants admit that the School Board held
16 meetings with parents of the children enrolled in the three schools identified by the Blue
17 Ribbon Facilities Committee for possible closure at various times, and deny that the
18 District was left with no available cost-saving option other than closure of grades six
19 through eight at Margaret Keating due to the order in which the meetings were held.
20 Defendants lack sufficient information or belief upon which to admit or deny the
21 remaining allegations set forth in this paragraph, and based on such lack of information
22 or belief, defendants deny each and every allegation contained therein.

23 Responding to ¶ 45 of the Complaint, defendants deny that Margaret Keating
24 parents were not given any informed opportunity to attend School Board meetings at
25 which possible school closure was discussed, and lack sufficient information or belief
26 upon which to admit or deny the remaining allegations set forth in this paragraph, and

1 based on such lack of information or belief, defendants deny each and every allegation
2 contained therein.

3 Responding to ¶ 46 of the Complaint, defendants deny the allegations set forth in
4 this paragraph, as pled.

5 Responding to ¶ 47 of the Complaint, defendants deny that the Native American
6 community, as well as the general Klamath community, "overwhelmingly opposed"
7 closure of the Margaret Keating middle school grades, admit that some members of the
8 Klamath community expressed concern about the possible closure of the middle school
9 grades, and lack sufficient information or belief upon which to admit or deny the
10 remaining allegations set forth in this paragraph, and based on such lack of information
11 or belief, defendants deny each and every allegation contained therein.

12 Responding to ¶ 48 of the Complaint, defendants admit that the School Board
13 unanimously approved the transfer of sixth through eighth grade students at Margaret
14 Keating to Crescent Elk Middle School, effective in the Fall of the 2005-2006 school
15 year, and lack sufficient information or belief upon which to admit or deny the remaining
16 allegations set forth in this paragraph, and based on such lack of information or belief,
17 defendants deny each and every allegation contained therein.

18 Responding to ¶ 49 of the Complaint, defendants deny each and every allegation
19 set forth therein.

20 Responding to ¶ 50 of the Complaint, defendants lack sufficient information or
21 belief to admit or deny the allegations contained therein, and based on such lack of
22 information or belief, defendants deny each and every allegation set forth therein.

23 Responding to ¶ 51 of the Complaint, defendants lack sufficient information or
24 belief to admit or deny the allegations contained therein, and based on such lack of
25 information or belief, defendants deny each and every allegation set forth therein.

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1 Responding to ¶ 52 of the Complaint, defendants admit that they did not follow
2 the recommendations of the Blue Ribbon Finance Committee, and affirmatively allege
3 they had no affirmative duty to follow such recommendations. Further responding to the
4 allegations, defendants lack sufficient information or belief to admit or deny the
5 allegations contained therein, and based on such lack of information or belief, defendants
6 deny each and every remaining allegation set forth therein.

7 Responding to ¶ 53 of the Complaint, defendants admit that the subject OCR letter
8 stated that the District violated Title VI Regulation 34 C.F.R. §100.3(a) based on the
9 negative determination that “there was not sufficient evidence to establish that the
10 decision was made for reasons other than national origin,” admit that, based on this
11 negative finding, found that the District did not comply with Title VI and “the
12 regulation,” deny that it made an affirmative and express determination that the Board
13 discriminated against Margaret Keating Native American students on the basis of race in
14 violation of Title VI, admit that it noted that its decision noted it was unable to find any
15 documentation or records prepared prior to the Board’s decision that explained why the
16 Board reassigned students from Margaret Keating, but did not implement the other
17 recommendations, admit that the decision stated that there was insufficient evidence to
18 substantiate the reasons stated by the Board for its decision, and deny the remaining
19 allegations in this paragraph. In addition, defendants affirmatively allege that the OCR
20 letter does not create the source of the rights sued upon by the plaintiff, is not relevant
21 precedent in this proceeding, and that the standards applicable to OCR regulatory
22 determinations are not the same standards which apply to a private cause of action.

23 Responding to ¶ 54 of the Complaint, defendants deny each and every allegation
24 set forth therein.

25 Responding to ¶ 55 of the Complaint, defendants deny each and every allegation
26 set forth therein.

1 Responding to ¶ 56 of the Complaint, defendants lack sufficient information or
2 belief to admit or deny the allegations of this paragraph, and based on such lack of
3 information or belief, defendants admit each and every approximate percentage alleged
4 therein.

5 Responding to ¶ 57 of the Complaint, defendants admit the stated findings of the
6 Native American Languages Act, deny that said Act creates any private cause of action,
7 and lack sufficient information or belief to admit or deny the remaining allegations
8 contained in this paragraph, and based on such lack of information and belief, defendants
9 deny each and every allegation set forth therein.

10 Responding to ¶ 58 of the Complaint, defendants lack sufficient information or
11 belief to admit or deny the allegations contained in this paragraph, and based on such lack
12 of information and belief, defendants deny each and every allegation set forth therein.

13 Responding to ¶ 59 of the Complaint, defendants deny that the closure of Margaret
14 Keating middle school grades diminishes these students' abilities to be full and active
15 members of their tribe, and lack sufficient information or belief to admit or deny the
16 remaining allegations contained in this paragraph, and based on such lack of information
17 and belief, defendants deny each and every allegation set forth therein.

18 Responding to ¶ 60 of the Complaint, defendants admit a Yurok structure is
19 maintained at the Margaret Keating School, but deny that it constitutes "a model Yurok
20 village." and admit on information and belief that children visited Margaret Keating
21 school, on occasion, to learn about Yurok culture, and affirmatively allege such
22 opportunities remain today. Defendants deny each and every remaining allegation
23 contained therein.

24 Responding to ¶ 61 of the Complaint, defendants deny each and every allegation
25 set forth therein.
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1 Responding to ¶ 62 of the Complaint, defendants deny each and every allegation
2 set forth therein.

3 Responding to ¶ 63 of the Complaint, defendants deny each and every allegation
4 set forth in the first sentence. Defendants lack sufficient information or belief to admit or
5 deny the remaining allegations contained in the second and third sentences, and based on
6 such lack of information and belief, defendants deny each and every allegation set forth
7 therein.

8 **COUNT ONE: FOURTEENTH AMENDMENT EQUAL PROTECTION CLAIM**

9 Responding to ¶ 64, defendants incorporate herein by reference as though fully set
10 forth herein all prior paragraphs contained in this answer.

11 Responding to ¶ 65 of the Complaint, defendants deny each and every allegation
12 set forth therein.

13 Responding to ¶ 66 of the Complaint, defendants admit that they deny plaintiffs
14 contentions and deny the remaining allegations in this paragraph.

15 Responding to ¶ 67 of the Complaint, defendants deny each and every allegation
16 set forth therein.

17 **COUNT TWO: TITLE VI CLAIM**

18 Responding to ¶ 68 of the Complaint, defendants incorporate herein by reference
19 as though fully set forth herein all prior paragraphs contained in this answer.

20 Responding to ¶ 69 of the Complaint, defendants deny each and every allegation
21 set forth herein.

22 Responding to ¶ 70 of the Complaint, defendants admit that defendants deny
23 plaintiffs' contentions, and deny the remaining allegations in this paragraph.

24 Responding to ¶ 71 of the Complaint, defendants deny each and every allegation
25 set forth therein.

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COUNT THREE: CAL. GOV. CODE §1135 CLAIM

[Claim Dismissed Pursuant to Order Filed April 18, 2008.]

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, defendants allege that plaintiffs have failed to state a cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, defendants allege that they are immune from suit pursuant to the 11th Amendment of the United States Constitution.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, defendants allege on information and belief that plaintiffs complaint is barred by the applicable statute of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, defendants allege that the defendants' acts were privileged under applicable statutes and case law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, defendants allege that the claim for violation of 42 U.S.C. §1983 is barred and subsumed by plaintiffs' claim for violation of Title VI.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, defendants allege that the named plaintiffs do not qualify as a certifiable class under applicable federal law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, defendants allege that plaintiffs lack standing under applicable federal law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, defendants cannot fully anticipate all affirmative defenses that may be applicable to this action; accordingly, defendants expressly reserve the right to assert additional defenses if and to the extent such affirmative defenses become applicable throughout the pendency of this action.

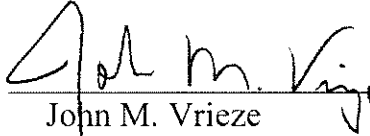
Defendants demand a jury.

1 WHEREFORE, defendants pray that plaintiffs take nothing by way of their
2 complaint, and further request costs of suit incurred, attorneys fees, and such other relief
3 as the Court deems just and proper.
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5 DATED: April 28, 2008

MITCHELL, BRISSO, DELANEY & VRIEZE

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7 By:



John M. Vrieze

William F. Mitchell

Attorneys for Defendants
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